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OFFICE OF PETITIONS

In re Application of :
Goelet et al. : DECISION GRANTING
Application No. 09/258,132 : PETITION
Filed: 26 February, 1999 :
Attorney Docket No. 04990.0007.U :

This is a decision on the petition filed on 11 October, 2002, which is being treated as a petition to withdraw the holding of abandonment for the above-identified application.

The petition is **GRANTED**.

The application was held abandoned on 4 March, 2002, for failure to timely submit an Appeal Brief in Triplicate in response to the Notice of Appeal filed on 3 January, 2002, which set a two (2) month period for reply. No extensions of time in accordance with 37 CFR 1.136(a) were obtained. The present petition precedes the mailing of a Notice of Abandonment.

Petitioners assert that a proper response was timely filed. In support of the petition, petitioners point to the Continued Prosecution Application (CPA), preliminary amendment, and five (5) month extension of time filed received in the USPTO on 7 August, 2002 as having been, in fact, timely filed on 5 August, 2002. In support, on 11 October, 2002, petitioners submitted a copy of a "Express Mail Post Office to Addressee" mailing label containing tracking number EV035772795US, the same number found on the CPA transmittal form, preliminary amendment, and five (5) month extension of time received on 7 August, 2002. Although the "date-in" on the Express Mail Label appears as "08/07/02", the Express Mail label also contains an official USPS postmark, dated 5 August, 2002. Additionally, a search of the USPTO's USPS Express Mail Database reveals that the above-identified Express Mail number was accepted by the USPS on 5 August, 2002.

In view of the above, it is concluded that the correct date of deposit for the CPA, preliminary amendment, and five (5) month extension of time is 5 August, 2002.¹

The petition complies with the requirements set forth in 37 CFR 1.10(e).

Accordingly, the holding of abandonment is withdrawn. The petition fee \$130.00 has been credited to counsel's deposit account, No. 11-0171.

The application file is being forwarded to Technology Center 1600 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at 703 308-6918.



Douglas I. Wood
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for Patent Examination Policy

¹As 3 August, 2002, fell on a Saturday, the CPA, preliminary amendment, and five (5) month extension of time were timely filed on 5 August, 2002.